No. 82-1066

In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA, APPELLANT

v.

HARRY PTASYNSKI, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

BRIEF FOR THE UNITED STATES

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QUESTIONS PRESENTED[1]

1. Whether the exclusion of certain geographically defined categories of Alaskan oil (26 U.S.C. (Supp. V) 4991(b)(3) and 4994(e)) from the coverage of the Crude Oil Windfall Profit Tax Act of 1980, violates the Uniformity Clause (Article I, Section 8, Clause 1) of the Constitution, which requires that "Duties, Imposts and Excises shall be uniform throughout the United States."

2. Assuming the answer to Question No. 1 is in the affirmative, whether the constitutionality of the remaining provisions of Title I of the Crude Oil Windfall Profit Tax Act should be upheld, pursuant to the separability clause of Section 7852(a) of the Internal Revenue Code of 1954.

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[1] Appellees are the taxpayers Harry Ptasynski, John Patridge, Berton W. Avery, Goldie Avery, Frederick S. Johnson, and the Calvin Petroleum Corporation.

Appellee-intervenors are the Independent Petroleum Association of America, American Association of Petroleum Landmen, Association of Oilwell Servicing Contractors, Eastern Kansas Oil and Gas Association, Liaison Committee of Cooperating Oil and Gas Associations, Arkoma Basin Independent Gas Producers Association, California Independent Producers Association, Illinois Oil and Gas Association, Indiana Oil and Gas Association, Independent Oil and Gas Association of West Virginia, Independent Petroleum Association of Mountain States, Kansas Independent Oil and Gas Association, Louisiana Landowners Association, Inc., Michigan Oil and Gas Association, New York State Oil Producers Association, Independent Oil Producers Tri-State, Inc., Independent Petroleum Association of New Mexico, Kentucky Oil and Gas Association, Louisiana Association of Independent Producers and Royalty Owners, National Stripper Well Association, North Texas Oil and Gas Association, Ohio Oil and Gas Association, Panhandle Producers and Royalty Owners Association, Pennsylvania Oil and Gas Association, Tennessee Oil and Gas Association, Virginia Oil and Gas Association, Oklahoma Independent Petroleum Association, Pennsylvania Grade Crude Oil Association, Permian Basin Petroleum Association, Texas Independent Producers and Royalty Owners Association, West Central Texas Oil and Gas Association, and the States of Texas and Louisiana (see J.A. 7-8, 13).

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OPINION BELOW

The memorandum opinion of the district court (J.S. App. 1a-11a) is reported at 550 F. Supp. 549.

JURISDICTION

Several of the appellees brought these suits in the United States District Court for the District of Wyoming, seeking a refund of windfall profit taxes, a declaratory judgment that the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, 94 Stat. 229 *et seq.*, is unconstitutional, and injunctive relief restraining the further assessment and collection of such taxes (J.A. 11-21). On November 4, 1982, the district court filed a judgment directing that appellees recover windfall profit taxes plus interest for the taxable periods in question in unspecified amounts to be later determined by the parties (J.S. App. 12a-13a). On November 12, 1982, the district court filed an amended order awarding judgment in favor of appellees in the amounts sought in the pleadings, with interest as provided by law, and also specifically setting forth the court's holding that the Crude Oil Windfall Profit Tax Act of 1980 is unconstitutional (J.S. App. 14a-15a). On November 15, 1982, the district court entered a further amended judgment order limiting its ruling of unconstitutionality to the provisions of

Title I of the Crude Oil Windfall Profit Tax Act (26 U.S.C. (Supp. V) 4986 to 4998 and related administrative provisions) (J.S. App. 16a-17a).[2]

On November 18, 1982, the United States filed a notice of appeal from all three judgment orders (J.S. App. 18a; J.A. III), and on February 22, 1983, this Court noted probable jurisdiction (J.A. 78). The jurisdiction of this Court rests on 28 U.S.C. 1252, which authorizes a direct appeal to this Court from an interlocutory or final judgment of a court of the United States holding an Act of Congress unconstitutional in a civil action to which the United States is a party.[3]

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 8, Clause 1 of the United States Constitution is set forth at J.S. App. 19a. Title I of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, 94 Stat. 229 *et seq.*, and Section 7852(a) of the Internal Revenue Code of 1954 (26 U.S.C.) are set forth at J.S. App. 20a-63a.

STATEMENT

A. *The Statute*

On April 2, 1980, the President signed into law the Crude Oil Windfall Profit Tax Act of 1980. Title I of that Act, 94 Stat. 230 *et seq.*, added Sections 4986 through 4998 to the Internal Revenue Code of 1954 (26 U.S.C. (Supp. V)) together with related administrative provisions.[4] Under Title

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[2] The order dated November 12, 1982, appears to have been withdrawn and replaced with the November 15 order before it was entered on the court's docket sheets (J.A. III).

[3] Although the judgment order of November 4, 1982, appears to have been interlocutory, the orders of November 12 and November 15, 1982, were final judgments because they determined the specific amounts to be refunded as sought in the pleadings and they contain the requisite determination that there is no just reason for delay in the entry of final judgment on the claims addressed. See Fed. R. Civ. P. 54(b). At all events, all three orders are appealable to this Court under 28 U.S.C. 1252. See *United States* v. *Clark*, 445 U.S. 23, 25-26 n.2 (1980).

[4] Title II of the Act, 94 Stat. 256 *et seq.*, provides for various energy expenditure and investment credits, unconventional fuel production

I of the Act, an excise tax is imposed (subject to certain exemptions) on the "windfall profit" derived from the production of domestic crude oil after February 29, 1980 (Sections 4986(a) and 4991(a)).[5] The "windfall profit" subject to the tax is determined (on a per barrel basis) by reference to the difference between the "removal price" (generally the price at which the oil is sold at the wellhead) and an "adjusted base price" reflecting, with certain adjustments, the price at which such oil would have been sold in 1979, under varying assumptions applicable to different categories of oil (Sections 4988(a), 4988(c) and 4989)).[6] An offset is allowed, however, for state severance taxes attributable to the value of the oil in excess of its "adjusted base price" (Sections 4988(a) (2) and 4996(c)). Finally, in no event can the taxable

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credits, energy related uses of tax-exempt bonds, and special income tax deductions for "tertiary injectant expenses." Title III of the Act, 94 Stat. 288 *et seq.*, provides for energy assistance for certain low income households, and Title IV, 94 Stat. 299 *et seq.*, provides for a number of miscellaneous amendments to unrelated provisions of the Internal Revenue Code of 1954 and other statutes.

[5] Under Section 4990, the tax is to be phased out over a 33-month period, beginning with the later of January 1988, or the first month (not later than January 1991) after the Secretary of the Treasury estimates that aggregate net revenues from the tax will exceed $227.3 billion as of the end of that month. Under Section 102 of the Act, 94 Stat. 255, revenues collected in the interim are required to be allocated to a separate account in the Treasury for the following uses: (1) income tax reductions (60 %), (2) low-income assistance (25 %), and (3) energy and transportation programs (15 %).

[6] In the case of "tier 1 oil"—*i.e.*, oil that does not qualify for the more favorable treatment accorded "tier 2" or "tier 3" oil—the base price reflects the applicable ceiling price (less 21 cents) for such oil if it had been sold as "upper tier" oil in May 1979, prior to the beginning of the phase out of the oil price controls provided for under the Energy Policy and Conservation Act of 1975, Pub. L. No. 94-163, 89 Stat. 871. Such "upper tier" prices under the then applicable regulations averaged $13.02 per barrel. H.R. Conf. Rep. No. 96-817, 96th Cong., 2d Sess. 92 (1980). The "base price" of "tier 2" and "tier 3 oil" is equal to the price at which such oil would have been sold in December 1979 on the assumptions (1) that the price of all domestic crude oil was then uncontrolled; and (2) that the average prices for domestic crude oil were then $15.20 per barrel for "tier 2 oil" and $16.55 for "tier 3 oil." Section 4989(c) and (d).

"windfall profit" exceed 90 % of the net income attributable to the oil (Section 4988(b)).

The rate of the tax varies between 30 % and 70 % of the "windfall profit" so determined. The rate depends upon the particular category of the oil (Section 4987(a)). The lowest rate (as well as the most favorable "base price" (see n.3, *supra*)) is applicable to "tier 3 oil" (which includes "newly discovered oil," "heavy oil" and "incremental tertiary oil" (Sections 4991(e) and 4993)).[7] The 30 % rate also applies to "independent producer oil" (Section 4992) that qualifies as "tier 2 oil" (which is oil from "stripper well properties" and from economic interests in National Petroleum Reserves held by the United States (Section 4991(d)). The highest rate (as well as the least favorable "base price") applies to "tier 1 oil" (which includes all nonexempt domestic oil other than "tier 2" or "tier 3" oil (Section 4991(c)) that does not qualify as "independent producer oil." "Tier 1 oil" that qualifies as "independent producer oil" and "tier 2 oil" that does not qualify as "independent producer oil" are taxable at the intermediate rates of 50 and 60 %, respectively.

Section 4991(b) exempts certain classes of oil from the tax. The exempt categories are: (1) oil from "qualified governmental interest[s]" (Section 4994(a)); (2) oil from "qualified charitable interest[s]" (Section 4994(b)); (3) certain oil from interests held by or for Indian tribes or their members or produced by corporations organized under the Alaska Native Claims Settlement Act, 43 U.S.C. (& Supp. IV) 1601 *et seq.* (Section 4994(d)); (4) "front-end tertiary oil" (Section 4994(c)); and (5) "exempt Alaskan oil" (Section 4994(e)). The last-mentioned category includes certain oil produced "(1) from a reservoir from which oil has been produced in commercial quantities through a well located north of the Arctic Circle, or (2) from a well located on the northerly side of the divide of the Alaska-Aleutian Range and at least 75 miles from the nearest point on the Trans-Alaska Pipeline System" (Section 4994(e)). However, exempt Alas-

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[7] Section 602 of the Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 337, amended Section 4987(b) to reduce the applicable tax rate in the case of "newly discovered oil" from 30 % to 15 %, in gradual steps during the period 1982-1986.

kan oil does not include "Sadlerochit oil," the only oil in the statutorily defined areas which was then in production. Sadlerochit oil is defined as "crude oil produced from the Sadlerochit reservoir in the Prudhoe Bay oilfield" (Section 4996(d)(3)).[8]

The liability for the windfall profit tax is ultimately placed on the "producer" of the oil (Section 4986(b)), defined generally as "the holder of the economic interest with respect to the crude oil" (Section 4996(a)(1)(A)). Section 4995, however, requires that the tax be withheld from the purchase price by the first purchaser of the oil, and further provides that the producer shall thereafter be treated as having paid the amount so withheld.[9]

B. *The Proceedings Below*

Six of the appellees are independent domestic oil producers and/or royalty holders who alleged that they were subject to the windfall profit tax.[10] They brought this action in the United States District Court for the District of Wyo-

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[8] Further exemptions were provided for certain oil produced by independent producers from "stripper well propert[ies]" and specified portions of a "qualified royalty owner's qualified royalty production," under amendments made to Sections 4991(b) and 4994 by Section 601 of the Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 336-337.

[9] The tax is deductible, for income tax purposes, by the producer under Section 164(a)(5) of the 1954 Code, as added by Section 101(b) of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, 94 Stat. 250. Certain holders of royalty interests, however, are entitled to treat up to $1,000 of windfall profit taxes paid with respect to their "qualified royalty production" for 1980 as a creditable or refundable "overpayment." Section 6429 of the Internal Revenue Code of 1954, as added by Section 1131 of the Omnibus Reconciliation Act of 1980, Pub. L. No. 96-499, 94 Stat. 2691. These provisions were extended to encompass "qualified royalty production" for the year 1981, and the amount allowable as a credit for that year was increased to $2,500, by Section 601 of the Economic Recovery Tax Act of 1981.

[10] The remaining appellees are 30 trade associations whose members are alleged to be oil producers or royalty holders subject to the tax, and the States of Texas and Louisiana, which were permitted to intervene in the case. See n.11, *infra*. Two other individual producers withdrew from the suit.

ming, seeking: (1) a declaratory judgment that the Alaskan oil exemption from the windfall profit tax violates the Uniformity Clause of Article I, Section 8, Clause 1, of the Constitution, and that the tax violates the Due Process and Taking Clauses of the Fifth Amendment to the Consitution; (2) an adjudication that all such taxes were illegally assessed and collected; and (3) an order directing the government to refund all such taxes (J.A. 6-21).[11]

On cross motions for summary judgment (J.A. 8-60), the district court first ruled that the question of the constitutionality of the windfall profit tax was ripe for decision even though there had been no production of "exempt Alaskan oil" during the periods in suit (see pp. 40-43, *infra*). It then held that the "exempt Alaskan oil" provision of the Windfall Profit Tax Act is unconstitutional under the Uniformity Clause. It reasoned that "[t]he Act, on its face, says that one state, Alaska, is not subject to the same tax, at the same rate as all the other states. This is a clear violation of the constitutional requirement of uniformity" (J.S. App. 7a). In so holding, the court rejected the government's argument that a rational justification for the Alaskan oil ex-

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[11] The original complaint did not allege that any of appellees filed administrative refund claims with respect to the taxes. However, appellees filed two amended complaints alleging that the producers and royalty holders had filed refund claims covering taxes paid for one or more taxable periods in calendar year 1980. The amended complaints also sought an order restraining the further assessment or collection of windfall profit taxes. Because the second amended complaint supplanted the earlier pleadings, the parties have not reproduced the previously filed complaints in the joint appendix.

In response to the government's motion to dismiss, urging, *inter alia*, that several trade associations lacked standing to join the action as plaintiffs, the district court dismissed the associations as plaintiffs but permitted them to remain as permissive intervenors. Moreover, over the government's objection, the district court permitted the States of Texas and Louisiana to intervene in the litigation urging that the windfall profit tax violates the Tenth Amendment as well as the Uniformity Clause (J.S. App. 61-2a; Louisiana Mot. to Aff. 3).

Finally, a subsequent suit that was filed by appellee John Partridge (J.A. 61-67), after filing a new refund claim covering all taxable periods in calendar year 1980, and which sought identical relief, was consolidated with the original action (J.S. App. 2a; J.A. 77).

emption supported its validity. As the court saw the matter, "[t]he Constitution has unequivocally set forth a limitation on indirect taxation—uniformity—which has been narrowly, but precisely defined by the judiciary. Distinctions based on geography are simply not allowed" (*ibid.*).[12]

The court also rejected the government's alternative contention that, at all events, pursuant to the "separability clause" in Section 7852(a) of the 1954 Code, the remaining provisions of the Act should be upheld, with respect to all domestic oil production not subject to other valid exemptions. The court stated that it would have given more "deferential consideration" to a separability clause written into the Windfall Profit Tax Act itself. It held that Section 7852(a) of the 1954 Code (to which the windfall profit tax provisions were added) was of "minimal" aid in providing a basis for sustaining the remaining tax provisions (J.S. App. 8a). In the district court's view, "the Alaska exemption was the result of negotiations and compromise, and * * * the Act as it exists today would not have been passed without the invalid Alaska provision" (J.S. App. 9a). Hence, it concluded that applying the "separability clause" of Section 7852(a) so as to extend the tax to Alaskan oil would require the court to engage in impermissible judicial legislation (J.S. App. 7a-10a).[13]

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[12] Although its ruling that the Windfall Profit Tax Act violated the Uniformity Clause obviated the necessity for consideration of appellees' claim that the Act was barred by the Due Process Clause of the Fifth Amendment, the court concluded that "[t]he Fifth Amendment challenge to the windfall profits tax is unfounded, and without merit * * *" (J.S. App. 10a).

[13] In its final amended judgment, the district court noted that its ruling was restricted to the provisions added by Title I of the Crude Oil Windfall Profit Tax Act of 1980 (26 U.S.C. (Supp. V) 4986-4998), and that it did not intend to hold the remaining provisions invalid as a result of its conclusion that the "exempt Alaskan oil" provisions could not be severed from the remaining provisions of the Act (J.S. App. 16a).

The district court stayed the effect of its order (J.S. App. 17a). Hence, no refunds have been issued to appellees and the windfall profit tax continues to be collected pendente lite. Accordingly, although the government argued below that appellees' suit for injunctive and declaratory relief is barred by the Anti-Injunction Act (26 U.S.C. (Supp.

SUMMARY OF ARGUMENT

I

In enacting the Crude Oil Windfall Tax of 1980, Congress exempted oil produced within certain geographically defined areas located on the "North Slope" of Alaska, and offshore oil that might be located on the Outer Continental Shelf adjacent to the North Slope. During the legislative debates, the point was repeatedly made, without contradiction, that because of its remote location, fragile environment, and extreme climatic conditions, the production of North Slope oil involved risks and costs far greater than the risks and costs of developing domestic oil properties elsewhere. The conference report similarly noted that the exemption "reflects the concern of the conferees that taxation of this production would discourage exploration and development of reservoirs in areas of extreme climatic conditions." H.R. Conf. Rep. No. 96-817, 96th Cong., 2d Sess. 103 (1980).

Prior to the decision below, no taxing statute had ever been held invalid on the ground that it violated the Uniformity Clause (Art. I, § 8, Cl. 1) of the Constitution, which requires that "Duties, Imposts and Excises shall be uniform throughout the United States." In ruling that the windfall profit tax violated that clause, the district court concluded that "[d]istinctions based on geography are simply not allowed" (J.S. App. 7a). Thus, it held that the "exempt Alaskan oil provisions" of the statute rendered the tax unconstitutional per se without regard to any rational justification that might exist for the exempt classification. The court's ruling rests upon a literal application of this Court's statement in the *Head Money Cases*, 112 U.S. 580, 594 (1884), that a "tax is uniform when it operates with the same force and effect in every place where the subject of it is found." In so ruling, the district court failed to take account of the underlying purpose of the Uniformity Clause (and the related Port Preference Clause), which was to prevent combinations of states from taking action that might,

V) 7421(a)) and the tax exception to the Declaratory Judgment Act (28 U.S.C. (Supp. V) 2201), this Court need not decide those questions.

through the exercise of the taxing power, strike at the vital interests of one state or region. Quite the opposite happened here, where substantial congressional majorities (including members from oil producing states) recognized and chose to accommodate the special circumstances confined to a limited geographic area within one state. Indeed, this is not even a case in which one state has received a blanket exemption for all oil produced within its boundaries, for the exemptions at issue apply to only particular areas within Alaska and outside its boundaries on the Outer Continental Shelf. The role of judicial review in our constitutional system ordinarily would be thought to be quite limited where the claim is, at bottom, that the representative institutions of the federal government should be restrained from discriminating against 49 states in favor of one.

Moreover, the district court's conclusion that an excise tax is not uniform and therefore violates Article I, Section 8, Clause 1, where *any* geographical considerations are employed in the definition of the "subject" of or exemptions from the tax is at odds with the actual holding of the *Head Money Cases*. That case affirmatively supports the power of Congress to take geographical considerations into account in drawing legitimate tax classifications. At issue there was the constitutionality of a duty levied against transportation companies on foreign passengers entering the United States by vessel. The Court squarely rejected the contention that the duty violated the Uniformity Clause on the ground that it did not operate with strict geographical uniformity since, by its terms, it could apply only in states having sea ports (a matter necessarily determined by considerations of their geography) and not in landlocked states where foreign passengers might arrive by railroad or other inland mode of conveyance. The Court noted that "the evil to be remedied by this legislation" did not exist on the inland borders, and that "substantial uniformity within the meaning and purpose of the Constitution" was achieved by the uniform application of the statute in those quarters in which that "evil" was found to exist. 112 U.S. at 595. Thus, the Court confirmed Congress' broad power to pick and choose subjects that, as a matter of geographical con-

siderations alone, exist only in certain states, and to leave untaxed similar "subjects" existing in other states. Similarly, in construing the analogous uniformity proviso applicable to the exercise of the bankruptcy power, this Court, relying on the same analysis as in the *Head Money Cases*, concluded that the uniformity requirement "does not deny Congress power to take into account differences that exist between different parts of the country, and to fashion legislation to resolve geographically isolated problems. " *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 159 (1974).

Here, too, the validity of the "Alaskan oil exemption" from the windfall profit tax should turn not, as the district court erroneously concluded, simply on the fact that Congress took geographical considerations into account, but rather on whether inclusion of those geographical considerations in the classification of the "subject" is justified in terms of the relationship of those considerations to the "subject" of the regulation or tax. Congress should be free to base an exemption on the distance of newly-discovered domestic oil from existing transportation systems and markets, and on unusual development costs resulting from extreme climatic and environmental conditions, even though those conditions might be found to exist only in limited areas and, perhaps, only within a single state. For example, if Congress had cast the exemption for North Slope oil in terms of the characteristics of remoteness of a location in which the average temperature did not exceed a particular level, there could be no quarrel with such a provision under the Uniformity Clause. An exemption provision that is designed to achieve precisely the same result, and that is justified by precisely the same considerations, should not be rendered unconstitutional on the ground that Congress chose to define the scope of the exemption not in terms of the underlying conditions themselves, but rather in terms of the only geographic location in which Congress had reason to believe that those conditions existed. Here, all oil producers who are similarly situated with respect to the purposes of the Windfall Profit Tax are treated alike regardless of their geographic location. This is the only uni-

formity the Constitution requires. The purpose of the Uniformity Clause is to provide substantive protection to the states, rather than to require mere niceties of congressional draftsmanship. And, more fundamentally, it would ill serve the great unifying purpose of the Constitution of which the Uniformity Clause is a part, for that clause to be interpreted as disabling the Congress and President from dealing with great national concerns, such as energy development and federal revenues, in a discerning, non-discriminatory way, as they did here.[14]

II

At all events, even assuming the "exempt Alaskan oil" provisions of Sections 4991(b)(3) and 4994(e) are unconstitutional, the district court erred in holding that the windfall profit tax was thereby rendered invalid in its entirety. Section 7852(a) of the 1954 Code expressly provides that, if any provision contained in that title (26 U.S.C.) is held invalid, "the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby." The decisions of this Court indicate that such "separability clauses" create, at a minimum, a strong presumption that Congress intended the courts to sever the unconstitutional portions of a statute and save the remainder. Moreover, the legislative history indicates that Con-

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[14] Even on the assumption that the Uniformity Clause prohibits Congress from drawing a distinction between North Slope "newly discovered oil" and other domestic "newly discovered oil," there was still no violation of the Uniformity Clause during the periods properly in question here. It was uncontested that there was, in fact, no production of "exempt Alaska oil" during the periods covered by any of the refund claims in issue. Hence, during the only periods for which the legality of the tax can be questioned in this refund suit, the taxing provisons operated with precisely the "same force and effect in every place where the subject * * * [was] found." Put another way, all oil falling into each taxable category established by the Act (including "newly discovered oil") was subject to tax during these periods on the same basis wherever it was found. Since the assertedly defective provisions remained wholly inoperative during the period for which the taxes in question were collected, there was not simply "substantial uniformity," but strict geographical uniformity with respect to the imposition of those taxes during those periods.

gress fully understood not only that the various provisions added to the Code by the Act would be subject to the "separability clause" of Section 7852(a), but also that it would apply in such a way as to strike down only the Alaska oil exemption, in the event it were held to violate the Uniformity Clause. Therefore, even if it is assumed that the Alaska oil exemption is barred by the Uniformity Clause, the "separability clause" of Section 7852(a) saves the remaining provisions of the Act.[15]

ARGUMENT

I

THE EXCLUSION OF CERTAIN GEOGRAPHICALLY DEFINED CATEGORIES OF ALASKAN OIL FROM THE CRUDE OIL WINDFALL PROFIT TAX DOES NOT VIOLATE THE UNIFORMITY CLAUSE OF THE CONSTITUTION

This case presents questions of great public importance to both the revenue and our national oil policy. In holding unconstitutional the windfall profit tax provisions added to the Internal Revenue Code of 1954 by the Crude Oil Windfall Profit Tax Act of 1980, the district court has invalidated an important federal tax statute that Congress enacted as an integral part of the decontrol of domestic oil pricing.[16]

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[15] At an absolute minimum, the separability clause of Section 7852(a) should be applied to sustain those portions of the taxing statute that apply to all categories of oil other than "newly discovered oil," which is the only type of oil that could ever qualify for the Alaskan exemption (see p. 50-51, n. 46, *infra*.).

[16] The amounts at stake are of enormous magnitude, and almost certainly exceed the revenues at issue in any other federal tax case ever presented to this Court. As we pointed out in our jurisdictional statement (at 8), it is estimated that the net windfall profit tax revenues from the inception of the tax through the end of the 1982 fiscal year are in excess of $26 billion, and that the net revenues during the next five years will be approximately $50 billion.

The gross revenues from the windfall profit tax through the end of fiscal year 1982 are estimated to be $50 billion. The windfall profit tax, however, is deductible for federal income tax purposes, under Section 164(a)(5) of the 1954 Code, and the windfall profit taxes attributable to economic interests owned by the United States reduce proprietary receipts. Accordingly, the net budgetary impact of the statutory provisions in question is smaller than the gross liability, but nevertheless very substantial.

The constitutional provision at issue here is the Uniformity Clause of Article I, Section 8, Clause 1, which requires that "Duties, Imposts and Excises shall be uniform throughout the United States." Prior to the decision below, no taxing statute had ever been held invalid on the ground that it violated the Uniformity Clause. In ruling that the windfall profit tax violated that clause, the district court flatly concluded that "[d]istinctions based on geography are simply not allowed" (J.S. App. 7a). Thus, it ruled that the exclusion of certain geographically defined categories of Alaskan oil from the windfall profit tax rendered the entire tax unconstitutional per se without regard to any rational justification that might exist for the exempt classification.

But, as we shall show, there is no per se rule in the Uniformity Clause jurisprudence of this Court that prohibits Congress from taking any geographical considerations into account in formulating excise tax statutes. Before addressing the Uniformity Clause decisions of this Court, however, it is important to consider the background of the Alaska oil exemption and the reasons why Congress distinguished between new oil produced within specific areas in Alaska and elsewhere.

A. Congress determined that the difficulties of producing oil in the "North Slope" areas of Alaska justified special tax treatment

1. Congress enacted the windfall profit tax in response to President Carter's decision in April 1979, to begin phasing out the price controls that had been imposed on domestic oil since 1971. Oil price controls had been extended and made mandatory through May 31, 1979, by the Energy Policy and Conservation Act of 1975, Pub. L. No. 94-163, 89 Stat. 871. That Act gave the President discretionary authority to extend such controls from May 31, 1979, through September 30, 1981. At the time domestic crude oil prices were first frozen in 1971, the price of crude oil had risen from a prevailing price of about $2.90 per barrel during the prior decade, to $3.39 per barrel. By June 1979, the uncontrolled world price for oil (including transportation costs to the United States) had risen to nearly $20 per barrel, with "spot market" prices occasionally exceeding $30 per barrel. At the same time, the average controlled price of domestic

"old oil" was $5.86 per barrel, and the average controlled price of domestic "new oil" was $13.06 per barrel. President Carter's announcement indicated that existing controls would be phased out over a period beginning in January 1980, and ending on October 1, 1981, the effective date of the expiration of the President's authority under the Energy Policy and Conservation Act of 1975. See H.R. Rep. No. 96-304, 96th Cong., 1st Sess. 4-7 (1979).[17]

The President proposed the windfall profit tax as an integral part of his plan to phase out existing price controls "[i]n order to prevent oil producers from reaping excessive profits from decontrol * * *." H.R. Doc. No. 96-107, 96th Cong., 1st Sess. 1 (1979). The President noted that the gradual removal of price controls on domestic oil would encourage exploration and production, eliminate inequities and inefficiencies under the existing system of controls, reduce United States dependency on foreign oil, and reduce the adverse balance of payments attributable to the importation of oil. He further concluded, however, that "deregulation of domestic oil prices will also provide enormous windfall gains for domestic producers of oil" as domestic oil prices rise to the prevailing world price, which had been drastically affected and could continue to be affected by actions taken by the nations participating in the "OPEC cartel" (*id.* at 1-2).

In favorably reporting on the proposed legislation, the House Ways and Means Committee similarly noted that decontrol of domestic oil prices would lead not only to "limited increases in production," but also to increases in profits to oil producers "far in excess of what most of them originally anticipated when they drilled their wells and in excess of what they might now be expected to invest in energy production." H.R. Rep. No. 96-304, *supra*, at 7. Thus, it agreed that "the additional revenues received by oil producers and royalty owners, both as a result of decontrol of oil prices and as a result of increases in world oil prices substantially above those prevailing in 1978, are an appropri-

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[17] The phase-out of price controls on domestic crude oil was actually completed by Exec. Order No. 12287, 3 C.F.R. 124, issued by President Reagan on January 28, 1981.

ate object of taxation" (*ibid.*). See also S. Rep. No. 96-394, 96th Cong., 1st Sess. 6, 27 (1979), setting forth the similar views of the Senate Finance Committee as to the imposition of such a tax on windfall profits from old oil.

As we have noted (pp. 2-5, *supra*), the tax that Congress ultimately enacted is imposed at varying rates, and the "windfall profit" subject to the tax is computed under varying bases, depending on the type of oil produced,[18] the nature of the producer,[19] the circumstances and manner under which the oil is produced,[20] and the time such oil was discovered and went into production.[21] While the pattern of classifications and exemptions was modified in certain respects as the proposed legislation was considered by the House and the Senate, the primary objective remained "to impose relatively high tax rates where production cannot be expected to respond very much to further increases in price and relatively low tax rates on oil whose production is likely to be responsive to price." H.R. Rep. No. 96-304, *supra*, at 7. See also S. Rep. No. 96-394, *supra*, at 7, 9.

Because of the unique climatological and environmental difficulties in oil extraction in the "North Slope" areas of Alaska, Congress recognized from the outset that oil produced in that region presented a special case with respect to both the existence of "windfall profits" and the determination of an appropriate tax to be imposed. Under the original Administration proposal, all oil produced from wells north of the Arctic Circle would have been exempt from the tax. H.R. 3919, 96th Cong., 1st Sess. § 2 (1979). At that time, because of the extraordinary transportation costs involved, Alaskan oil was selling for a wellhead price that

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[18] See, *e.g.*, Section 4991(e)(1)(B) and (e)(3) placing "heavy oil" in the favorable category of "tier 3 oil."

[19] See, *e.g.*, Section 4987(b)(2), providing for reduced tax rates in the case of "independent producer oil" as defined by Section 4992.

[20] See, *e.g.*, Section 4991(d)(1)(A) and (e)(1) providing that oil from "stripper well" properties and "incremental tertiary oil," as defined in Section 4993, are to be favorably treated as "tier 2 oil" and "tier 3 oil," respectively.

[21] See Section 4991(e)(1)(A), providing that "newly discovered oil" is to be favorably treated as "tier 3 oil."

was far below what eventually became the lowest "base price" for computing the taxable "windfall profit." Moreover, it was expected that the wellhead price for such oil would remain $8 to $9 less than the prevailing uncontrolled wellhead price of domestic oil produced elsewhere. H.R. Rep. No. 96-304, *supra*, at 30. See also Staff of Joint Comm. on Taxation, 96th Cong., 1st Sess., *The Design of a Windfall Profit Tax* 21 (Comm. Print 1979). Accordingly, the Secretary of the Treasury expressed the view that "there are no windfalls that will be gained by the producers of Alaskan crude." *Proposed Windfall Profits Tax and Creation of Energy Trust Fund: Hearings Before the House Comm. on Ways and Means*, 96th Cong., 1st Sess. 27 (1979) ("*House Hearings*")). As the Secretary explained, "[i]t is easier to exempt Alaskan production from the tax than to require Alaskan producers to file tax returns solely for the purpose of showing that no liability has been incurred." *House Hearings*, *supra*, at 19.[22]

By the time the proposal reached the House itself, further price increases indicated that the uncontrolled world price would soon reach a level at which the uncontrolled wellhead price for North Slope oil would exceed its 1979 ceiling. H.R. Rep. No. 96-304, *supra*, at 6-7. The House Committee on Ways and Means, and the House itself, nevertheless agreed with the concept of exempting "new oil" produced from wells north of the Arctic Circle, but proposed not to extend the exemption to "Sadlerochit oil," which had already gone into production. H.R. Rep. No. 96-304, *supra*, at 30. The bill as reported by the Senate Finance Committee, however, would have eliminated the ne-

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[22] As the Joint Committee staff study indicated (*House Hearings*, *supra*, at 21), the world price of oil would have to rise (as it ultimately did) to at least $22 per barrel (or the tariff rate for the Trans-Alaska Pipeline would have to be correspondingly reduced) in order for the price of Alaskan oil to rise to its then applicable ceiling price. The staff study also indicated (at 22) that the exemption was intended "to eliminate the possibility of creating a disincentive for the production of Alaskan oil." Although it concluded that there was relatively little risk that a tax on Sadlerochit oil would discourage production, it noted that production costs for the other two known Prudhoe Bay reservoirs would be higher.

cessity of providing such a specific exemption for new North Slope oil by proposing to exempt *all* "newly discovered oil" from the scope of the tax. S. Rep. No. 96-394, *supra*, at 42-43.[23] A floor amendment proposed by Senate Majority Leader Byrd, and approved by the Senate, however, provided for the imposition of a 10% tax on the "windfall profit" from "newly discovered oil (other than newly discovered oil produced north of the Arctic Circle)." 125 Cong. Rec. 3087, 36510 (1979).[24]

Thus, while the bills passed by the House and the Senate differed on a number of points, both ultimately provided for taxing "newly discovered oil," but on a favorable basis and subject to an exemption for new oil (*i.e.*, oil other than Sadlerochit oil) produced north of the Arctic Circle. The legislation thereafter took its final form in the version approved by the conferees assembled to reconcile the differences between the Senate and House bills. The conference version expanded the scope of the Alaskan exemption to include oil that might be produced in areas south of the Arctic Circle, but north of the divide of the Alaska-Aleutian mountain range, if produced from a well at least 75 miles from the nearest point on the Trans-Alaskan Pipeline System. The conference report noted that this exemption "re-

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[23] The Finance Committee proposal, like the provisions ultimately enacted (Section 4991(a)(2)), provided that the term "newly discovered oil" has the same meaning it had in the June 1979 energy regulations. Under that definition, the term would encompass all oil from properties from which no crude oil was produced in calendar year 1978. See 10 C.F.R. 212.79(b) (1981), 44 Fed. Reg. 25828, 25832 (1979). As the committee noted, this definition of "newly discovered oil" would exclude Sadlerochit oil. S. Rep. No. 96-394, *supra*, at 42-43.

[24] Amendments previously offered by Senators Ribicoff and Bradley would have taxed the "windfall profit" from "newly discovered oil" at a rate of 20%, but also would have exempted "newly discovered oil" produced north of the Arctic Circle. 125 Cong. Rec. 35258 (1979). Concerns with respect to the high costs and risks involved in producing North Slope oil and the disincentive to further exploration and development that would be imposed by subjecting that oil to tax had been expressed by both Senator Gravel (125 Cong. Rec. 31733 (1979)) and Senator Stevens (125 Cong. Rec. 33850, 34006-34009 (1979).

flects the concern of the conferees that taxation of this production would discourage exploration and development of reservoirs in areas of extreme climatic conditions." H.R. Conf. Rep. No. 96-817, 96th Cong., 2d Sess. 103 (1980). The conference version was approved without further change, by the House by a vote of 302 to 107 (126 Cong. Rec. H1861 (daily ed. Mar. 13, 1980)) and by the Senate by a vote of 66 to 31 (126 Cong. Rec. S3151 (daily ed. Mar. 27, 1980)).

2. As the very title of the Act (J.S. App. 20a) and the operative language of Section 4986(a) demonstrate, the subject of the windfall profit tax is the "windfall profit" derived from oil production. Thus, the statutory distinctions between different categories of oil do not turn upon differences in the physical character and quality of the product itself.[25] Instead, the statute focuses upon differences in the "windfall profit" that the holder of the economic interest in the property would realize from production after decontrol.

The structure of the tax reflects the fact that Congress was concerned with at least two distinct types of "windfall profit" that might be enjoyed by oil producers as a result of the decontrol of oil prices. The first and most readily identifiable element of such "windfall profit" was the additional revenues that would immediately be generated on the removal of price controls with respect to the continuing production of previously controlled oil. There was broad agreement among the Administration, the House and the Senate, as well as the tax committees of both houses, that the imposition of some form of tax was appropriate with respect to this element of "windfall profit," because (1) continued pro-

[25] One apparent exception is the classification of "heavy oil," which is defined in terms of its physical characteristics (Section 4991(e)(3)). This category is included within the favorably treated "tier 3" group. This classification, however, is not based on the fact that such oil has any favorable characteristics, but on the fact that it is more "tar-like" and, hence, more difficult to produce. S. Rep. No. 96-394, *supra*, at 51. Accordingly, the favorable treatment for "heavy oil," like that for "newly discovered oil" and "incremental tertiary oil," is based on considerations relating to the profit incentive necessary to employ the production techniques to produce such oil rather than the physical characteristics of the oil itself.

duction of such oil would lead to a supererogatory element of profit above that expected when the oil was developed to production; and (2) the imposition of such a tax was not expected to constitute a significant disincentive to continued production. See H.R. Rep. No. 96-304, *supra*, at 7; S. Rep. No. 96-394, *supra*, at 6; *House Hearings*, *supra*, at 174 (statement of Charles L. Schultze, Chairman of the Council of Economic Advisers).

There was considerably more controversy, however, as to whether any "windfall profit" would exist with respect to new production, or production of "old" oil by unconventional production techniques. As we have pointed out (p. 15, *supra*), one of the fundamental purposes of the removal of price controls was to encourage the discovery and development of new oil, as well as the exploitation of known reservoirs that could not profitably be developed through conventional production techniques. See H.R. Doc. 96-107, *supra*, at 2; *House Hearings*, *supra*, at 7-10, 16-17. While a second element of "windfall profit"—reflecting the increased revenues that might be generated from further increases in uncontrolled world oil prices—might nevertheless be attributed to both "old" oil and "new" oil, there was considerable debate whether that second element should be identified as a taxable "windfall profit" in the case of new oil. See S. Rep. No. 96-394, *supra*, at 7, and also at 167 (additional views of Senator Dole).

Moreover, Congress recognized that it was even more difficult to identify an element of "windfall profit" appropriate for taxation in the case of "North Slope" oil. Such oil was subject to extraordinary transportation costs, which served to reduce the wellhead price (and hence gross revenues) by $6-8 per barrel, and extraordinarily high exploration and development costs, which were estimated at several times the cost of domestic exploration and development elsewhere. See *Crude Oil Tax: Hearings on H.R. 3919 Before the Senate Comm. on Finance*, 96th Cong., 1st Sess. 218-224, 238-243 (1979); *House Hearings*, *supra*, at 453-455.[26] Congress ultimately agreed on a tax under which

[26] The basis for Congress' concern as to the effect of the imposition of even the smallest tax on new production on the North Slope is

conventionally produced "old oil" would generally be deemed to generate a "windfall profit" equal to the difference between the removal price and the May 1979 *controlled* price for "upper tier" oil, and such "windfall profit" would generally be taxable at the highest rate provided for by the statute. Production of "newly discovered oil" was also deemed to generate a "windfall profit," but only in the amount of the difference between the removal price and the December 1979 *uncontrolled* price for such oil, and that "windfall profit" was taxable only at the lowest rate provided for by the statute.

At the same time that Congress determined to treat Sadlerochit oil (the only oil then in production on the "North Slope" or elsewhere within the area defined by Section 4994(e)) on the same basis as other "old" oil, it entirely exempted new production in areas north of the Arctic Circle or north of the divide of the Alaska-Aleutian Range and more than 75 miles distant from the Trans-Alaska Pipeline System because of the differences in development and transportation costs for such oil. Thus, while the statute refers to "exempt Alaskan oil" (Section 4991(b)(3) and 4994(e)), that designation is simply a shorthand reference to the geographically defined areas subject to the exemption, and does not, as the district court mistakenly observed, apply to oil "found only in Alaska" (J.S. App. 4a). In fact, the exemption applies to any new production in areas north of the specified features (the Arctic Circle or the divide of the Alaska-Aleutian Range), including oil that might be produced in offshore United States territorial waters.[27]

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shown by the fact that a relatively small reduction in the price of oil during 1982 led to a slowdown of development in the Kuparuk River field. See 80 Oil and Gas J. 83 (July 12, 1982). The continued drop in oil prices is expected to delay exploitation of new finds in the area. See 286 The Economist 57, 59 (Jan. 29, 1983).

[27] Offshore oil found further than three miles from Alaska's coastline and located on the Outer Continental Shelf is subject to the exclusive jurisdiction and control of the United States. Jurisdiction over offshore areas closer than three miles has been conferred on the states by federal statute. Submerged Lands Act, 43 U.S.C. (Supp. IV) 1301-1315; see *Maryland* v. *Louisiana*, 451 U.S. 725, 730 (1981). The exercise of

Hence, the so-called Alaska exemption does not apply to all areas within the boundaries of the State of Alaska, or even to all oil produced in the areas to which it does apply. Indeed, as we shall discuss in further detail (pp. 40-43, *infra*), none of the oil produced in the State of Alaska during 1980 was eligible for the exemption, and, for 1981, only a minuscule portion of Alaskan production was exempt on this basis. Of 592 million barrels of crude oil produced in Alaska in 1981 (about 20 % of the total United States production), only about 800,000 barrels (or about 0.13 % of Alaskan production) qualified as "exempt Alaskan oil." Dep't of Energy, *U.S. Crude Oil, Natural Gas & Natural Liquids Reserves, 1981 Annual Report ("1981 Annual Report)* 22, Table 6 (1982); Internal Revenue Service, *Statistics of Income Bulletin* ("*S.I.B.*") 45, Table 6 (Fall 1982). Moreover, most of the Alaskan production was reported as taxable Sadlerochit oil (about 461 million barrels), all of which was taxable at the highest rate (70 %) provided for by the statute. *S.I.B.*, *supra*, at 43, Table 3. Finally, all other significant Alaskan production was in wholly non-exempt areas, primarily in the Cook Inlet.[28] Alaska Oil and

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the taxing power with respect to activities outside the states themselves is not subject to the Uniformity Clause. See p. 32-33 n.33, *infra*.

[28] As of the end of 1981, estimated proven reserves for the Kuparuk River field (the first "exempt Alaskan oil" to go into production) were 447 million barrels as compared with reserves for the Prudhoe Bay field of 7.2 billion barrels, most of which is in the Sadlerochit formation. Alaska Oil and Gas Conservation Commission, *1981 Statistical Report* 23; *The Design of the Windfall Profit Tax*, *supra*, at 21. All other proven Alaskan reserves (*ibid.*) are in other areas not encompassed by Section 4994(e). In their Mot. to Aff., the taxpayer and association appellees assert (p. 3 n.4) that there are estimated "undiscovered reserves" in the exempt area of 17.2 billion barrels. However, most "undiscovered recoverable resources" are attributed to offshore areas (see *Geological Survey Circular* 860, at 2 (Table 1), 74, 76, 78-79 (1981)). See also *Operator Interest in U.S. Beaufort Sea*, 80 Oil and Gas Journal 72, 77 (July 12, 1982); 65 AAPG Bulletin 1757, 1758 (Oct. 1981), indicating that much of the oil to be extracted from exempt regions will likely come from wells drilled on the outer continental shelf in areas leased from the United States. For example, while state leases in the exempt area totalled $59.7 million in 1982, federal leases

Gas Conservation Commission, *1981 Statistical Report, supra*, at 10-12. In sum, while production of "exempt Alaskan oil" from the Kuparuk field (which commenced in December 1981) was expected to reach the level of 250,000 barrels per day by the end of 1982, even at that rate, exempt production would remain far less than current production of taxable Sadlerochit oil.[29]

Indeed, the production of taxable Sadlerochit oil in 1981 far exceeded the total oil production of any other state except Texas. *1981 Annual Report, supra*, at 22, Table 6. Thus, while the taxpayer and association appellees assert (Mot. to Aff. 15 n.21), without citation and supporting authority, that the bulk of the windfall profit tax is "borne" by just five states (Texas, Louisiana, California, Oklahoma and Wyoming) and that the remainder is "borne" by 28 states none of which "bears" more than 3 % of the tax burden,[30] the undisputed fact is that a tax liability of $2.4 billion—nearly 10 % of the total reported liability for all domestic oil for 1981—was reported with respect to Sadlerochit oil alone. *S.I.B., supra*, at 43, Table 3. Obvi-

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in the Outer Continental Shelf for that year totalled more than $2 billion. More significantly, the highest per/acre bid in the federal sales was $39,901, compared to the highest per acre bid in the state sales of $6,397. 80 Oil and Gas J. 58 (May 31, 1982); *id.* at 48-50 (Oct. 18, 1982).

[29] Although the taxpayer and association appellees suggest (Mot. to Aff. 2 n.1) that it is inaccurate to refer to the exemption as a "North Slope" or "Arctic oil" exemption because the exempt area defined by Section 4994(e) includes a large area below the Arctic Circle, those descriptive terms reflect the practical realities of the exemption. There has been no production from, and little exploration of, this additional area. Thus, in 1980 and 1981, only three exploration wells (all on native lands) were drilled in any area of Alaska outside of the Cook Inlet and North Slope areas. *Geological Survey Circular 884*, at 13. Estimated undiscovered crude oil resources in Alaskan areas south of the Arctic Circle and north of the divide of the Alaska-Aleutian Range are minimal, and possibly nonexistent. See *Geological Survey Circular 860, supra*, at 74-78. It is therefore far more accurate to refer to the exemption as a "North Slope" or "Arctic" exemption than to refer to it, as do the district court and the appellees, as an "Alaskan exemption."

[30] Obviously, none of these states "bear" this tax liability, nor is there any necessary correlation between the total tax burden that might be imposed on a particular state's production and the total tax burden that is borne by the residents of that state.

ously, then, a substantial portion of the overall tax liability imposed by the Act—and an amount at least comparable to that imposed in the five states singled out by the appellees in this regard—is imposed on Alaskan production, even though the removal price (and hence, the per barrel "windfall profit") of most of that oil is far less than that of other domestic "tier 1 oil" because of the extraordinary transportation costs involved. *S.I.B., supra*, at 43, Table 2.

B. The Uniformity Clause does not prohibit Congress from drawing tax classifications based on special circumstances existing within particular geographic areas

1. *The Uniformity Clause Does Not Require Strict Geographic Uniformity But Was Intended to Prohibit Combinations of States From Imposing Discriminatory Taxes on Some States and Granting Undue Preferences to Others*

Article I, Section 8, Clause 1, of the Constitution provides that "The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises to pay the Debts and provide for the common Defence and general Welfare of the United States; *but all Duties, Imposts and Excises shall be uniform throughout the United States*" (emphasis added). As the Court noted in *Knowlton* v. *Moore*, 178 U.S. 41, 102-106 (1900), the Uniformity Clause is closely tied to the Port Preference Clause of Article I, Section 9, which provides that "No preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another * * *." See also C. Warren, *The Making of the Constitution*, 570-588 (2d ed. 1937).

The origin of the Uniformity Clause can be traced to a draft submitted to the Constitutional Convention on August 6, 1787, by its Committee on Detail. Closely following language earlier proposed by General Pinckney on this subject, the draft provided that the legislature be given the powers "to lay and collect taxes, duties, imposts and excises" and "[t]o regulate commerce with all nations, and among the several states." *Knowlton* v. *Moore*, *supra*, 178 U.S. at 101-103. With respect to the taxing power, however, the draft limited direct and "capitation" taxes to

those apportioned on the basis of the population and prohibited the laying of any tax or duty on articles exported from any state, or on the migration or importation of "such persons as the several states shall think proper to admit." The commerce power was similarly limited by a provision barring Congress from prohibiting "such migration or importation," and was also limited by a provision requiring a two thirds majority for approval of any "navigation act." A. Prescott, *Drafting of the Federal Constitution* 104-105 (1941).

These proposals addressed, but did not resolve, a number of sectional fears and jealousies reflecting not only the division concerning the institution of slavery, but also the economic divisions among the agricultural, manufacturing, and shipping interests of the various states. See *Warren, supra*, at 570-574. Many of these differences were settled by the compromise approved by the Convention on August 29, 1787, which eliminated the restriction regarding "navigation acts," and which limited the power to tax, but allowed for the prohibition after 1808 of "the migration or importion of * * * persons." *Warren, supra*, at 578-582.

Nevertheless, this "crucial compromise" (*Warren, supra*, at 578) did not allay all of the fears of the delegates relating to the broad powers to regulate commerce and to impose taxes. On August 25, 1787, Messrs. Carroll and Martin of Maryland had moved the following proposition (C. Tansill, *Documents Illustrative of the Formation of the United States* 619 (1927)):

> The Legislature of the U.S. shall not oblige vessels belonging to citizens thereof, or to foreigners, to enter or pay duties or imposts in any other state than in that to which they may be bound, or to clear out in any other than the State in which their cargoes may be laden on board; nor shall any privilege or immunity be granted to any vessels on entering or clearing out, or paying duties or imposts in one State in preference to another.

This proposal was designed to prevent the national legislature from favoring the ports of certain states by requiring all vessels to enter and clear at those ports. *Knowlton* v.

Moore, *supra*, 178 U.S. at 103; *Warren*, *supra* at 586. Because some delegates believed that this proposal would facilitate smuggling, Mr. McHenry of Maryland and General Pinckney of South Carolina proposed the following provision (*Tansill*, *supra*, at 619):

> "Should it be judged expedient by the Legislature of the U.S. that one or more ports for collecting duties or imposts other than those ports of entrance & clearance already established by the respective States, should be established, the Legislature of the U.S. shall signify the same to the Executives of the respective States, ascertaining the number of such ports judged necessary; to be laid by the said Executives before the Legislatures of the States at their next Session; and the Legislature of the U.S. shall not have the power of fixing or establishing the particular ports for collecting duties or imposts in any State, except the Legislature of such State shall neglect to fix and establish the same during their first session to be held after such notification by the Legislature of the U.S. to the Executive of such State."
>
> "All duties imposts & excises, prohibitions or restraints laid or made by the Legislature of the U.S. shall be uniform & equal throughout the U.S."

A Special Committee, to whom these proposals were referred, thereafter recommended the following clause incorporating these suggestions (*id.* at 626):

> "Nor shall any regulation of commerce or revenue give preference to the ports of one State over those of another, or oblige vessels bound to or from any State to enter, clear or pay duties in another and all tonnage, duties, imposts & excises laid by the Legislature shall be uniform throughout the U.S."

Although the Convention ultimately adopted this proposal, it was not set forth in a single clause. Rather, the first half containing the Port Preference Clause was placed in Section 9 of Article I; the second half containing the Uniformity Clause was added to Section 8 of Article I. "Thus, it came to pass that although the provisions as to preference

between ports and that regarding uniformity of duties, imposts and excises were one in purpose, and in their adoption, they became separated only in arranging the Constitution for purpose of style." *Knowlton* v. *Moore*, *supra*, 178 U.S. at 105.

The successive versions of the Uniformity Clause demonstrate not only the close relationship between it and the Port Preference Clause, but also that the Framers did not intend to require "intrinsic" uniformity, *i.e.*, that duties, imposts or excises fall equally on the various states or their populations. As the Court observed in *Knowlton* v. *Moore*, *supra*, 178 U.S. at 104—

> The sense in which the word 'uniform' was used is shown by the fact that the committee, whilst adopting in a large measure the proposition of Mr. McHenry and General Pinckney, 'that all duties, imposts, excises, prohibitions or restraints * * * shall be uniform and equal throughout the United States,' struck out the words 'and equal.' Undoubtedly, this was done to prevent the implication that taxes should have an equal effect in each State. As we have seen, the pith of the controversy during the confederation was that even, although the same duty or the same impost or the same excise was laid all over the United States, it might operate unequally by reason of the unequal distribution or existence of the article taxed among the respective States.

The agricultural states considered the adoption of the Uniformity and Port Preference Clauses to be a victory over the large states with ports and substantial shipping interests, and a prophylactic measure against further oppressive combinations among these states. See Report of North Carolina delegates to Governor Caswell, in *Warren*, *supra*, at 726-727. As Joseph Story explained in his classic constitutional test:

> The answer to the * * * [uniformity requirement] may be given in a few words. It was to cut off all undue preferences of one state over another, in the regulation of subjects affecting their common interests. Unless duties, imposts and excises were uniform, the

> grossest and most oppressive inequalities vitally affecting the pursuits and employments of the people of different states might exist.

J. Story, *Commentaries on the Constitution of the United States*, § 957, at 673 (2d ed. 1851). In short, the Uniformity Clause was designed to prevent "combinations" that might, through the exercise of the taxing power, strike at the "vital interests" of one region. *Ibid.* See also *Warren*, *supra* at 587-588, 726-727.

2. *Congress' reason for exempting new oil produced within the "North Slope" of Alaska does not contravene the purpose of the Uniformity Clause*

In light of the legislative background of the windfall profits tax (see pp. 13-23, *supra*), it is plain that Congress had a rational basis for excluding certain geographically defined categories of Alaskan oil from the coverage of the windfall profit tax. Moreover, the basis of Congress' decision does not violate the underlying purpose of the Uniformity Clause, which was to prevent combinations of states from imposing taxes that grant an undue preference to their own states or to impose an oppressive discrimination against a minority. Hence, the validity of the "Alaskan oil exemption" should not turn, as the district court erroneously concluded, simply on the fact that Congress took geographical considerations into account. Rather, the question is whether the classification based on those geographic considerations is justified by the relationship of those considerations to the "subject" of the regulation or tax. Put another way, the question is whether, in fashioning the tax, Congress could, while favoring generally "newly discovered oil" over "old oil," accord the most favorable treatment to "newly discovered oil" located in certain areas (Section 4994(e)).[31]

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[31] The scope of Section 4994(e) is not, as the Taxpayer and Association appellees suggest (Mot. to Aff. 10), defined in terms of the geographic boundaries of the State of Alaska, but in terms of the relative position of the well vis-a-vis the Arctic Circle or the divide of the Alaska-Aleutian Range and the Trans-Alaskan Pipeline.

There can, of course, be no dispute that the exemption here at issue is geographically defined so as to exclude oil located in all of the 50 states except portions of Alaska. It is equally beyond dispute, however, that Congress had a rational basis for drawing such a classification. Obviously, this is not an instance in which "combinations" of states have drawn taxing legislation in such a way as to grant an "undue preference" in favor of their own states or to impose an "oppressive" discrimination against a minority. Rather, it is an instance of a broad-based congressional majority (including many members from other oil-producing states) granting an exemption applicable to only a portion of the oil production that might be derived in the future from certain areas that include a part of a single state.

Nor could these provisions be characterized as an "undue preference" in favor of Alaskan producers. Indeed, the benefit of the exemption falls on the owners of economic interests in that oil wherever they might reside or be incorporated. Moreover, the "subject" of the tax in question is not the production of crude oil, per se, but the enjoyment of a "windfall profit" by the holders of such economic interests as a result of the removal of price controls on domestic oil and the concomitant increase in the selling price of such oil to the prevailing world price. The various classifications adopted with regard to this tax demonstrate Congress' belief that the existence and extent of such "windfall profits," as well as the appropriate tax to be levied, would vary on the basis of a number of factors including the nature and type of the oil in question, the nature of the producer and the quality of his interest in the oil, and the circumstances under which the oil is produced. As the legislative history of the Act makes clear, Congress sought to draw tax classifications that would not deter producers from fully exploiting existing properties or from exploring and developing new properties. See H.R. Rep. No. 96-304, *supra*, at 7, 14; S. Rep. No. 96-394, *supra*, at 2, 6, 7.

The critical question therefore is whether Congress could carve out a portion of the "newly discovered oil" that might be produced in areas north of the Arctic Circle or in areas located north of the Alaska-Aleutian Range and more than

75 miles from the Trans-Alaska Pipeline System and accord such oil even more favorable treatment. We submit that this exemption serves the legitimate purposes of the legislation in question, and that it does not violate the Uniformity Clause, despite the fact that it is defined in terms of the geographic location of such oil. Congress had substantial grounds for concluding that North Slope oil—particularly North Slope oil that had not yet gone into production—presented a special case, distinct from domestic oil found elsewhere (including other oil found in Alaska). First, North Slope oil that was in production at the time the tax was under consideration brought a substantially lower price at the wellhead than did equivalent oil produced in other locations of the United States because of its distance from existing markets and the necessity of transporting it over the newly constructed Trans-Alaska Pipeline. Indeed, the price of such North Slope oil was only about half the applicable ceiling price for such oil. H.R. Rep. No. 96-304, *supra*, at 5, 30. Moreover, Congress anticipated that the wellhead price for such oil would continue, in the foreseeable future, to be $8 to $9 less than the prevailing wellhead prices in other producing states.[32]

Second, during the debates, the point was repeatedly made, without contradiction, that because of its "severe weather conditions, remoteness, sensitive environmental and geological characteristics, and a lack of normal social and industrial infrastructure," the production of North Slope oil involved risks and costs far greater than the risks and costs of developing domestic oil properties elsewhere. See, *e.g.*, 125 Cong. Rec. 31733, 33850, 34006-34009 (1979); and S17478-S17480 (daily ed. Nov. 29, 1979) (comments of Senators Bradley and Stevens). Accordingly, Congress had substantial reason to question whether North Slope oil (other than that produced from the Sadlerochit reservoir) would, in fact, generate a "windfall profit" comparable to that generated by the other categories of oil subject to this

[32] In fact, the tax returns for 1981 indicate that there was a difference of more than $10 per barrel between the removal price of Sadlerochit oil and "tier 1" oil generally. See *S.I.B.*, *supra*, at 44, Table 4.

tax, and to conclude that the imposition of even the relatively small windfall profit tax burden applicable in the case of other "newly discovered oil" might deter further exploration and development of North Slope properties. There was no showing either in Congress or in the court below that domestic production elsewhere would involve the combination of similar developmental costs and risks and transportation-related disparities.

In sum, it was entirely consistent with the purpose of the Uniformity Clause for Congress to draw an exemption provision based, in general terms, on the distance of newly-discovered domestic oil from existing transportation systems and markets, and on unusual development costs incurred as a result of extreme climatic and environmental conditions, even though those conditions were found to exist only in a limited geographic area, including a portion of only a single state. Indeed, if Congress had cast the exemption for North Slope oil in terms of a location of a certain degree of remoteness, climate, and environmental obstacles, there could be no quarrel with such a provision under the Uniformity Clause. An exemption provision that is designed to achieve precisely the same result, and that is justified by precisely the same considerations, should not be rendered unconstitutional on the ground that Congress chose to define the scope of the exemption not in terms of the underlying conditions themselves, but rather in terms of the only geographic location in which Congress had reason to believe that those conditions existed. The purpose of the Uniformity Clause is to provide substantive protection to the states, rather than to require mere niceties of congressional draftsmanship. And, more fundamentally, it would ill serve the great unifying purpose of the Constitution of which the Uniformity Clause is a part, for that clause to be interpreted as disabling the Congress and President from dealing with great national concerns, such as energy development and federal revenues, in a discerning, nondiscriminatory way, as they did here.

3. *The decisions of this Court under the Uniformity Clause support the validity of the exemption of North Slope Alaska Oil*

a. The decisions of this Court confirm that the Uniformity Clause does not require what might be termed "intrinsic" uniformity. Thus, Congress' broad power to choose the appropriate subjects of taxation encompasses the power to choose subjects that do not exist uniformly throughout the United States. *Knowlton* v. *Moore, supra*, 178 U.S. at 108. Assuming the subject chosen by Congress for taxation (or exemption) itself represents a permissible classification, the Uniformity Clause is not violated simply because that subject occurs only in a few states, or indeed only in a single state.

To be sure, where no other distinction can properly be drawn between a "subject" as it exists in different states, the Uniformity Clause may require the same treatment in each instance. But while classifications that operate only in certain areas might be subject to special scrutiny in light of the purposes of the Uniformity Clause, we submit that the inquiry cannot be separated from the question whether the tax classifications drawn by Congress are supported by rational considerations showing that they are not intended, and do not operate, either as an "undue preference" in favor of, or an "oppressive" discrimination against,the affected states.

Thus, the holding of this Court in the *Head Money Cases*, 112 U.S. 580 (1884), affirmatively supports the power of Congress to take geographical considerations into account in drawing legitimate tax classifications. At issue there was the constitutionality of a duty levied against transportation companies on foreign passengers entering the United States by vessel. The Court squarely rejected the contention that the duty violated the Uniformity Clause on the ground that it did not operate with strict geographical uniformity since, by its terms, it could apply only in states having sea ports (a matter necessarily determined by their geography) and not in landlocked states where foreign passengers might arrive by railroad or other inland mode of conveyance. In so ruling, the Court observed that "[p]er-

fect uniformity and perfect equality of taxation, in all the aspects in which the human mind can view it, is a baseless dream * * *" (112 U.S. at 595). The Court noted that "the evil to be remedied by this legislation has no existence on our inland borders, and immigration in that quarter needed no such regulation" (*ibid.*), and that "substantial uniformity within the meaning and purpose of the Constitution" was achieved by the uniform application of the statute in those quarters (*i.e.*, seaports) in which that "evil" was found to exist (*ibid.*). Thus, the Court confirmed that Congress' broad power to pick and choose subjects of taxation includes the power to choose subjects that, as a matter of geographical considerations alone, exist only in certain states, and to leave untaxed similar "subjects" existing in other states. The ultimate question, in the Court's view, was whether Congress had a reasonable basis for distinguishing between the activity that was taxed in coastal states and the similar activity that was untaxed in inland states.

Similarly, in *Knowlton* v. *Moore*, *supra*, the Court considered a challenge to the federal inheritance tax on the ground, *inter alia*, that it was not uniform because the rate of taxation turned on the degree of the relationship between a deceased and the beneficiaries, which in turn depended on testamentary and intestacy laws that differed from state to state. In rejecting that argument, the Court stated (178 U.S. at 108)—

> The proposition in substance assumes that the objects taxed by duties, imposts and excises must be found in uniform quantities and conditions in the respective States, otherwise the tax levied on them will not be uniform throughout the United States. But what the Constitution commands is the imposition of a tax by the rule of geographical uniformity, not that in order to levy such a tax objects must be selected which exist uniformly in the several States.

See also, *e.g.*, *Flint* v. *Stone Tracy Co.*, 220 U.S. 107, 158 (1911); *Billings* v. *United States*, 232 U.S. 261, 282-284 (1914); *Fernandez* v. *Wiener*, 326 U.S. 340, 359-361 (1945).[33]

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[33] It is well established, however, that the Uniformity Clause does not apply at all to territories, federal enclaves, or other possessions of

b. Appellees agree that the Uniformity Clause does not mandate intrinsic uniformity (see Taxpayers and Association Mot. to Aff. 10). Hence, Congress could presumably impose an excise tax on the harvesting of citrus fruits even though such a commodity might be (or even could be) grown in only a few of the several states. Appellees contend, however, that the Uniformity Clause strictly prohibits Congress from casting an excise tax (or an exemption) in geographic terms, even if it has a rational basis for distinguishing between the various geographic circumstances where the subject of the tax might be found. In so urging, appellees invoke this Court's statement in the *Head Money Cases*, *supra*, 112 U.S. at 594, quoted in *Knowlton* v. *Moore*, *supra*, 178 U.S. at 86, upon which the district court likewise relied (J.S. App. 6a), that "The tax is uniform when it operates with the same force and effect in every place where the subject of it is found."

But this statement cannot be read as an abstract rule of constitutional law without regard to the context in which it was rendered. Indeed, the decisions of this Court have never construed the Uniformity Clause to require the strict geographic uniformity which the district court prescribed. As we have pointed out (*supra*, pp. 31-32), the subject of the tax at issue in the *Head Money Cases* was "the business of bringing passengers from foreign countries into this, by ocean navigation * * *" (112 U.S. at 594). Because the "subject" of the tax was foreign passengers arriving by ocean navigation, not foreign passengers generally, the Court concluded that the tax "[was] uniform [because it] operat[ed] precisely alike in every port of the United States where such passengers [could] be landed" (*ibid.*). By means

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the United States, but is limited to the States. *Downes* v. *Bidwell*, 182 U.S. 244, 278, 287 (1901); *Mercury Press* v. *District of Columbia*, 173 F.2d 636, 637 (D.C. Cir., 1948); Bosley, *The Constitutional Requirement of Uniformity in Duties, Imposts and Excises*, 9 Yale L.J. 164 (1900). Hence, the Clause places no restriction on Congress with respect to taxation or exemption of offshore oil located in the outer continental shelf and, arguably, has no application in the case of any offshore oil. See pp. 20-21 n. 27, *supra*.

of this analysis, the Court upheld Congress' power to define the subject of a tax, even in geographic terms, in order to remedy a specific national problem. The Court made that clear when it stated that "the evil to be remedied by this legislation has no existence on our inland borders, and immigration in that quarter needed no such regulation" (*id.* at 595). In these circumstances, the tax operated with "the same force and effect where the subject of it is found" because "the law applie[d] to all *ports* alike, and evidently g[ave] no preference to one over another * * *" (*ibid.*; emphasis in original). Accordingly, the Court concluded that "Here there is substantial uniformity within the meaning and purpose of the Constitution" (*ibid.*).

The foregoing analysis fully applies to this case and demonstrates that there is no constitutional prohibition against properly casting an excise tax in geographic terms. Here, Congress has identified "windfall profit" from the sale of oil by the producer as the subject of the tax, and has further determined that oil produced within a particular geographic area is not part of "the evil to be remedied," *i.e.*, that such exempt oil will not generate *windfall* profits for its producers because of the particular economic differences arising from the characteristics of the area. Just as in the *Head Money Cases* Congress could identify foreign passengers arriving in ports (as opposed to inland cities) as the subject of the tax, here, too, Congress could identify the production and sale of various categories of oil (as opposed to North Slope newly discovered oil) as the subject of a windfall profits tax. Contrary to appellees' argument (Taxpayers and Association Mot. to Aff. 10), the fact that the tax in the *Head Money Cases* was cast in terms of "ports," rather than in particular geographic terms, does not distinguish that precedent for purposes of this case. Both the word "ports" and the statutorily defined categories of exempt Alaskan oil are terms necessarily requiring geographic inclusion and exclusion from the operation of the tax. Hence, in both instances, Congress can, consistently with the Uniformity Clause, properly define the subject of a tax even though that subject is not to be found within a particular geographic area. "The question always is, when a classifica-

tion is made, whether there is any reasonable ground for it, or whether it is only and simply arbitrary, based upon no real distinction and entirely unnatural * * *. If the classification be proper and legal, then there is the requisite uniformity in that respect." *Nicol* v. *Ames*, 173 U.S. 509, 521 (1899). Here, all oil producers who are similarly situated with respect to the purposes of the Windfall Profit Tax Act are treated alike regardless of their geographic location. This is the only uniformity the Constitution requires.

4. *Analogous decisions of this Court construing the Bankruptcy Clause and Port Preference Clause support Congress' power to take geographic considerations into account in enacting excise taxes*

Our submission that the Uniformity Clause does not bar Congress from taking pertinent geographic considerations into account in enacting excises taxes finds further support in the decisions of this Court construing the Bankruptcy Clause and Port Preference Clause of the Constitution.

a. *The Bankruptcy Clause.* Article I, Section 8, Clause 4 of the Constitution gives Congress power "To establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." The language of the Bankruptcy Clause is comparable to the Uniformity Clause insofar as both provisions mandate laws that are "uniform" in their application throughout the Nation. In the *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1974), the Court considered a challenge to the Regional Rail Reorganization Act of 1973, on the ground that it violated the bankruptcy uniformity requirement because it operated only in a single statutorily defined region. Although the Court acknowledged that "the argument has a certain surface appeal," it concluded that it "is without merit because it overlooks the flexibility inherent in the constitutional provision" (*id.* at 158). As the Court observed, "[t]he uniformity provision does not deny Congress power to take into account differences that exist between different parts of the country, and to fashion legislation to resolve geographically isolated problems" (*id.* at 159).[34]

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[34] *Railway Labor Executives' Ass'n* v. *Gibbons*, 455 U.S. 457 (1982), upon which the Taxpayer and Association appellees rely (Mot.

Significantly, for purposes of this case, the Court relied upon its analysis of the Uniformity Clause in the *Head Money Cases, supra.* In terms that convincingly refute the district court's conclusion (J.S. App. 7a) that "[d]istinctions based on geography are simply not allowed," the Court stated (419 U.S. at 160-161):

> Our construction of the Bankruptcy Clause's uniformity provision comports with this Court's construction of other "uniform" provisions of the Constitution. The *Head Money Cases*, 112 U.S. 580 (1884), involved the levy on ships' agents or owners of a 50-cent tax for any passenger not a United States citizen who entered an American port from a foreign port "by steam or sail vessel." Individuals engaged in transporting passengers from Holland to the United States challenged the levy as contrary to Art. I, § 8, cl., 1, under which Congress is empowered to lay and collect "all Duties, Imposts and Excises [which] shall be uniform throughout the United States." The argument was that the head tax violated the uniformity clause because it was not also levied on noncitizen passengers entering this country by rail or other inland mode of conveyance. The Court upheld the tax, stating:
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>> "The tax is uniform when it operates with the same force and effect in every place where the subject of it is found. The tax in this case * * * is uniform and operates precisely alike in every port of the United States where such passengers can be landed." 112 U.S. at 594.

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to Aff. 6, 9, 12, 17), is not to the contrary. There, the Court invalidated an Act of Congress that was "not a response either to the particular problems of major railroad bankruptcies or to any geographically isolated problem: it [was] a response to the problems caused by the bankruptcy of *one* railroad" (455 U.S. at 470; emphasis in original). While the Court reaffirmed its prior decision in the *Regional Rail Reorganization Act Cases, supra*, as upholding "bankruptcy laws that apply to a particular industry in a particular region," it concluded that "[t]he uniformity requirement, however, prohibits Congress from enacting a bankruptcy law that, by definition, applies only to one regional debtor" (455 U.S. at 473), *i.e.*, a private bankruptcy law.

That the tax was not imposed on noncitizens entering the Nation across inland borders did not render the tax nonuniform since "the evil to be remedied by this legislation has no existence on our inland borders, and immigration in that quarter needed no such regulation." 112 U.S. at 595. Similarly, the Rail Act is designed to solve "the evil to be remedied," and thus satisfies the uniformity requirement of the Bankruptcy Clause. The argument that the Rail Act differs from the head tax statute because by its own terms the Rail Act applies only to one designated region is without merit. The definition of the region does not obscure the reality that the legislation applies to all railroads under reorganization pursuant to § 77 during the time the Act applies.

b. *The Port Preference Clause.* As we have pointed out (*supra*, p. 23), Article I, Section 9, Clause 6 of the Constitution provides that "No preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another * * *." This provision and the Uniformity Clause "were, in effect, in framing the Constitution, treated, as respected their operation, as one and the same thing, and embodied the same conception." *Knowlton* v. *Moore*, *supra*, 178 U.S. at 106.

To the extent that the Court has addressed the Port Preference Clause, it has likewise accorded Congress considerable latitude in drawing distinctions between particular ports of different states. For example, in *Commission* v. *Texas N.O.R.R.*, 284 U.S. 125 (1931), the Louisiana Public Service Commission challenged certain intrastate railroad tariffs set by the Interstate Commerce Commission on the ground that the rates, in effect, favored the ports of Texas over those of Louisiana (*id.* at 130). The ICC rate schedule was intended to rectify the discrimination caused by Louisiana's intrastate rates against shippers in Texas who were equidistant or closer to destinations in Louisiana than shippers in Louisiana (*id.* at 135). The Court rejected Louisiana's challenge in the following terms (*id.* at 131) (emphasis added):

> The specified limitations on the power of Congress were set to prevent preference as between States in

> respect of their ports or the entry and clearance of vessels. *It does not forbid such discriminations as between ports*. Congress, acting under the commerce clause, causes many things to be done that greatly benefit particular ports and which incidentally result to the disadvantage of other ports in the same or neighboring States. The establishing of ports of entry, erection and operation of lighthouses, improvement of rivers and harbors and the providing of structures for the convenient and economical handling of traffic are examples [citations omitted]. The construction for which appellants contend would strip Congress of much of the power that it long has been accustomed to exert and which always has been held to have been granted to it by the commerce clause.

Pennsylvania v. *Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1855), is to the same effect. There, Congress had authorized the building of a bridge across the Ohio River that was too low to allow clearance of all vessels plying the river. The State of Pennsylvania attacked this impediment to waterborne commerce on the ground that it favored the port of Wheeling, Virginia, at the expense of the port of Pittsburgh, Pennsylvania, and therefore violated the Port Preference Clause. But the Court refused to ascribe such a broad prohibition to the Clause. In the Court's view (*id.* at 435):

> [W]hat is forbidden is, not discrimination between individual ports within the same or different States, but discrimination between States: and if so, in order to bring this case within the prohibition, it is necessary to show not merely discrimination between Pittsburgh and Wheeling, but discrimination between the ports of Virginia and those of Pennsylvania.

Thus, the Court held that the discrimination that was the object of the Port Preference Clause was not simply any distinction between various ports, but rather systematic discrimination in favor of, or against, the commerce of one state. It was not intended to proscribe laws merely because they incidentally favored or prejudiced some line of commerce in one state or another. *Pennsylvania* v. *Wheeling*

& Belmont Bridge Co., *supra*, 59 U.S. (18 How.) at 433-434; *South Carolina* v. *Georgia*, 93 U.S. 4, 13 (1876).

Given the close relationship between the Port Preference Clause and the Uniformity Clause, the Court's decisions support our submission that the Uniformity Clause likewise prohibits only systematic preference for or discrimination against a particular state or states. Here, with respect to the windfall profit tax, there is no systematic preference in favor of production of oil in Alaska. While some "newly discovered oil" that has been produced in Alaska since December 1981 is treated more favorably than "newly discovered oil" produced elsewhere, it is equally true that the bulk of Alaskan oil production has been, and is likely to continue to be, taxable at the highest rate applicable under the statute, and therefore taxed less favorably than a great deal of oil produced elsewhere in the United States. As Senator Stevens noted, the favorable treatment accorded to oil produced from "stripper well" properties and to "independent producer oil" are of little benefit to Alaskan producers because there are no "stripper wells" and few, if any, "independent producers" operating in that state. 125 Cong. Rec. 34006-34007 (1979). Indeed, Senator Long indicated that one of the reasons for adopting the "exempt Alaskan oil" provisions was to reduce what otherwise might have been considered to be a disproportionate share of the overall tax burden being imposed on Alaskan producers. 126 Cong. Rec. S3056 (daily ed. Mar. 26, 1980). While it is well settled that the Uniformity Clause does not require "intrinsic" uniformity or equivalence in the tax burden imposed on the populations of the various states, the Framers of the Constitution could hardly have intended that the Uniformity Clause would impede Congress from distributing the burden of a tax more equitably among the states. Indeed, the role of judicial review in our constitutional system ordinarily would be thought to be quite limited where the claim is, at bottom, that the representative institutions of the federal government should be restrained from discriminating against 49 states in favor of one.

C. The Windfall Profit Tax Act Operated With Absolute Geographic Uniformity As To All Domestic Oil Produced Prior To December 1981

Even on the assumption that the district court correctly ruled that the Uniformity Clause requires that all crude oil be taxed on the same basis without regard to the geographic area in which it is found, it erred in holding that the windfall profit tax violated that requirement during the periods in question in this suit. It is undisputed that there was no production of any oil that was actually exempt from tax under the "exempt Alaskan oil" provision until December 1981, almost one full year after the end of the last period covered by any of the refund claims in this case (J.A. 22, 26, 29, 31, 68, 71). Viewing this obstacle to decision simply as a matter of "ripeness" (J.S. App. 4a), the district court concluded that the issue was ripe for decision because exempt production from the Kuparuk River field had commenced by the time of its decision. It simply assumed that its ruling would govern the refund claims for the prior periods. But the court's ruling was erroneous in light of the narrow scope of its jurisdiction in this tax refund suit. Thus, even if the constitutional issue became ripe for decision with respect to later periods, the district court should not have invalidated the tax for those periods in which it operated with absolute geographic uniformity.

1. One of the most firmly established principles of our jurisprudence is the exercise of judicial restraint in reaching and deciding constitutional issues. This Court has often emphasized the need for caution in entertaining constitutional challenges to legislation and declaring such legislation unconstitutional. See *Ashwander* v. *TVA*, 297 U.S. 288, 345-346, 354-355 (Brandeis, J., concurring) (1936); *Rescue Army* v. *Municipal Court*, 331 U.S. 549, 568-573 (1947). The question of the constitutionality of revenue acts, in particular, has been treated with special caution. *Nicol* v. *Ames*, *supra*, 173 U.S. at 515.

Among the interrelated body of principles upon which the Court has relied in refusing to reach constitutional issues prematurely or unnecessarily is the doctrine of "ripeness"—*i.e.*, that the issue ordinarily will not be reached

unless the alleged constitutional injury actually has occurred, or in injunctive suits, unless such constitutional injury is imminent.[35] See, *e.g.*, *Boyle* v. *Landry*, 401 U.S. 77, 80-81 (1971); *Toilet Goods Ass'n* v. *Gardner*, 387 U.S. 158, 163-166 (1967). Despite the fact that the tax had operated with absolute geographic uniformity during the periods for which refund claims were filed, the district court found that the uniformity issue was ripe for decision because production of "exempt Alaskan oil" ultimately did commence after this litigation was initiated. In support of its decision, the district court relied on *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936), *Pennsylvania* v. *West Virginia*, 262 U.S. 553 (1923), and *Pierce* v. *Society of Sisters*, 268 U.S. 510 (1925), in which this Court had held that constitutional issues raised in suits for injunctive relief were ripe for decision upon a showing that the alleged constitutional injury was, in fact, about to be incurred by the litigants.

But those precedents have no application to this case, where the only statutory basis for the district court's jurisdiction is 28 U.S.C. 1346(a)(1), which permits actions to be maintained against the United States for the recovery of taxes alleged to have been erroneously or illegally assessed and collected. Pursuant to the terms of Section 7422(a) of the 1954 Code, the district court's jurisdiction in a refund suit is limited to those instances in which the taxpayer has filed an administrative refund claim. See *United States* v. *Felt & Tarrant Co.*, 283 U.S. 269, 272-273 (1931); *Biggs* v. *United States*, 326 F. Supp. 749, 751 (E.D. Ky. 1971); cf. *Rosengarten* v. *United States*, 181 F. Supp. 275, 279 (Ct.

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[35] The doctrine of ripeness is closely related to, though broader than, the general requirement of "standing"—*i.e.*, that a person challenging the statute be adversely affected by its alleged unconstitutional operation. See, *e.g.*, *Blum* v. *Yaretsky*, No. 80-1952 (June 25, 1982), slip op. 9 n.13; *Simon* v. *Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 37-39 (1976). Here, the producer/royalty holder appellees concededly had standing to challenge the imposition of the taxes for the periods for which refund claims had been submitted. But the standing of appellees is of little significance in light of the fact that the district court lacked jurisdiction to adjudicate the validity of the tax for those periods (see pp. 41-42, *infra*).

Cl.), cert denied, 364 U.S. 822 (1960). Accordingly, the district court's jurisdiction was limited to the periods for which claims for refund had been filed, *i.e.*, March 1 through December 31, 1980.[36]

2. Moreover, the question is not simply one of ripeness, as such, but whether, assuming the district court's reading of the Uniformity Clause is correct, the Act could be deemed to violate the Clause when, in fact, during the only periods for which the legality of the tax can be questioned in this refund suit, the taxing provisions operated with precisely the same force and effect in every place where the subject was found. Since the assertedly defective provisions remained wholly inoperative during the period for which the taxes in question were collected, there was not simply "substantial uniformity," but absolute geographical uniformity with respect to the imposition of those taxes during those periods. Hence, appellees suffered no injury from the alleged unconstitutionality of the exemption.

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[36] Insofar as appellees' claims for declaratory and injunctive relief with respect to the operation of the tax in later periods are concerned, the requisite statutory consent to the maintenance of such suits against the United States is lacking (see *United States* v. *Sherwood*, 312 U.S. 584, 586-587 (1941); *Dugan* v. *Rank*, 372 U.S. 609, 617-618 (1963)) and such relief is expressly barred by the Anti-Injunction Act (Section 7421(a) of the Internal Revenue Code of 1954) and the tax exception to the Declaratory Judgment Act (28 U.S.C. (Supp. V) 2201). The bar of the Anti-Injunction Act is subject to a narrow exception where (1) under no circumstances could the United States prevail on the merits of its claim; and (2) there is no other adequate legal remedy. *Enochs* v. *Williams Packing Co.*, 370 U.S. 1, 7 (1962); *Bob Jones University* v. *Simon*, 416 U.S. 725 (1974). Even if the exception were otherwise applicable, however, the doctrine of sovereign immunity would bar this suit, where the only named defendant was the United States. See *Buck* v. *United States*, 466 F.2d 481 (10th Cir. 1972); *Matya* v. *United States*, 478 F.2d 330 (8th Cir. 1973). Moreover, because any taxpayer actually subject to the tax is free to file the requisite refund claim and then to bring a refund suit under 28 U.S.C. 1346(a)(1), the second aspect of the *Enochs* v. *Williams Packing Co.* requirement would, at all events, not be satisfied. Finally, it is highly questionable whether the association and state appellees would have standing to seek such relief. See *Simon* v. *Eastern Ky. Welfare Rights Org.*, *supra; Massachusetts* v. *Mellon*, 262 U.S. 447, 484-486 (1923); *Florida* v. *Mellon*, 273 U.S. 12, 18 (1927).

Had Congress exempted oil produced in the State of Hawaii, an area in which oil never has been found, its action might be characterized as somewhat bizarre and irrational, but it could hardly be contended that such an exemption would cause the tax to run afoul of the Uniformity Clause. By the same token, until such time as "exempt Alaskan oil" was actually produced (and, thus, until such time as its producers were actually given the benefit of the exemption), the provisions here in question stand on the same footing. Hence, appellees are not entitled to refunds for the periods in suit.[37]

II

EVEN IF THE ALASKAN OIL EXEMPTION VIOLATES THE UNIFORMITY CLAUSE, THE REMAINING PROVISIONS OF THE WINDFALL PROFIT TAX ARE SEPARABLE AND SHOULD BE UPHELD

1. Assuming that the exemption provisions of Sections 4991(b)(3) and 4994(e) violate the Uniformity Clause (even for periods prior to December 1981), the district court nevertheless erred in holding the entire tax invalid. The general rule is that (*Lynch* v. *United States*, 292 U.S. 571, 586 (1934)):

> * * * a statute bad in part is not necessarily void in its entirety. A provision within the legislative power may be allowed to stand if it is separable from the bad. But no provision however unobjectionable in itself, can stand unless it appears both that, standing alone, the provision can be given legal effect and that the legislature intended the unobjectionable provision to stand in case other provisions held bad should fall. *Dorchy* v. *Kansas*, 264 U.S. 286, 288, 290.

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[37] See also *Regional Rail Reorganization Act Cases*, *supra*, 419 U.S. at 159-160. There, apart from the other reasons stated for rejecting the plaintiffs' contention that the Rail Act violated the bankruptcy uniformity requirement, the Court noted that the statute had operated with absolute geographic uniformity in any event because no other railroad reorganization proceedings were pending during the period the Act was in effect.

See Stern, *Separability and the Separability Clauses in the Supreme Court*, 51 Harv. L. Rev. 76, 77 (1937).

It is firmly established that, in the absence of compelling evidence to the contrary, the Court will presume that Congress intends the unconstitutional portion of a statute to be severed from the remainder. "'The cardinal principle of statutory construction is to save and not to destroy'." *Tilton* v. *Richardson*, 403 U.S. 672, 684 (1971) (plurality opinion), quoting *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937). The invalid portions of a statute are to be severed "'[u]nless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not'." *Buckley* v. *Valeo*, 424 U.S. 1, 108-109 (1976), quoting *Champlin Refining Co.* v. *Corporation Commission*, 286 U.S. 210, 234 (1932).

There can be little doubt that the portions of the statute remaining after the excision of Sections 4991(b)(3) and 4994(e) can be given legal effect standing on their own. If the Alaskan exemption provisions were removed, then all oil production would be taxed under the remaining statutory provisions. Profit from production that would otherwise qualify as "exempt Alaskan oil" would then be taxed as "tier 3 oil" (unless, of course, it fell within one of the other exemptions in the statute).[38] Moreover, despite the district court's assertion that "the legislative history and spirit remains somewhat of an enigma in this case" (J.S. App. 9a), that history makes it abundantly clear that this is not (*United States* v. *Raines*, 362 U.S. 17, 23 (1960)):

> that rarest of cases where this Court can justifiably think itself able confidently to discern that Congress would not have desired its legislation to stand at all unless it could validly stand in its every application.

Section 7852(a) of the 1954 Code provides that "[i]f any provision of this title [26 U.S.C.], or the application thereof to any person or circumstances, is held invalid, the remain-

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[38] Except for taxable Sadlerochit oil, all oil produced in the geographical area falling within the Alaskan exemption constitutes "newly discovered oil," as defined by Section 4991(e)(2).

der of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby." This separability provision has been included in the tax laws in virtually identical terms since the Revenue Act of 1921, ch. 136, Section 1403, 42 Stat. 321. The presence of this clause creates a strong presumption that Congress intended the valid portions of the Internal Revenue Code to be separated from invalid portions.[39] See *McElroy* v. *United States ex rel. Guagliardo*, 361 U.S. 281, 283 (1960); *Electric Bond & Share Co.* v. *SEC*, 303 U.S. 419, 434 (1938); *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 312-313 (1936).

Moreover, the pertinent legislative history of the Windfall Profit Tax confirms that Congress understood that in the event the Alaskan exemption provisions were declared invalid, the saving provision of Section 7852(a) would become fully applicable. During the debate on the tax, several Senators voiced reservations as to the constitutionality of the Alaskan oil exemption. 126 Cong. Rec. S2771, S2773-2774 (daily ed. Mar. 20, 1980); S2825-2828 (daily ed. Mar. 21, 1980); S2854-2855 (daily ed. Mar. 24, 1980) (comments and submissions of Senators Bellmon, Boren, Schmitt, and Stevens). In response, Senator Long, the Chairman of the Finance Committee and the floor manager of the bill in the Senate, expressed the view that the bill satisfied the requirements of the Uniformity Clause. 126 Cong. Rec. S3055-3056 (daily ed. Mar. 26,1980). But, recognizing the possibility that the "exempt Alaskan oil" provisions might be held to violate that requirement, he noted (*id.* at 3056):

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[39] The presumption of separability is especially appropriate in the case of revenue measures, even without an express separability clause. As the Court noted in *Field* v. *Clark*, 143 U.S. 649, 696-697 (1892):

> Unless it be impossible to avoid it, a general revenue statute should never be declared inoperative in all its parts because a particular part relating to a distinct subject may be invalid. A different rule might be disastrous in the financial operations of the government, and produce the utmost confusion in the business of the entire country.

> It is our thought that there is a separability clause in the Internal Revenue Code which applies to everything in the code and to all amendments to it, and we would expect and we would intend, if the courts should find a constitutional objection valid with respect to the Alaskan oil exemption, that the Alaskan oil exemption should not stand and that Alaskans or those producing oil in Alaska would have to pay the same 30 percent tax on new oil that everybody else would have to pay.

No contrary views were expressed as to the applicability or operation of Section 7852(a) by any proponent or opponent of this legislation in either the House or the Senate. There is nothing "enigmatic" in this statement by the chairman of one of the two committees responsible for drafting this legislation.[40] Senator Long's statement demonstrates that Congress was fully aware that the provisions added to the Internal Revenue Code by the Crude Oil Windfall Profit Tax Act would be subject to the "separability clause" of Section 7852(a), and that if the Alaska oil exemption were held invalid the exemption would be severed and the windfall profit tax itself preserved.[41]

Finally, even apart from this explicit statement as to the applicability of the separability clause of Section 7852(a), it can hardly be thought that Congress would not have enacted a windfall profit tax if it could not have provided the Alaskan exemption in its present form.[42] The legislative

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[40] As a statement of one of the bill's sponsors, Senator Long's explanation deserves to be accorded substantial weight in interpreting the statute. *FEA* v. *Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976); *Schwegmann Bros.* v. *Calvert Distillers Corp.*, 341 U.S. 384, 394-395 (1951).

[41] Senator Long also expressed the view that, in the event the exemption were held invalid and severed, Congress might then consider whether to devise other relief for high-risk, high-transportation-cost oil production. 126 Cong. Rec. S3056 (daily ed. Mar. 26, 1980).

[42] Senator Stevens of Alaska voted against passage of the Act (126 Cong. Rec. S3151 (daily ed. Mar. 27, 1980)), as did Alaska's only House member, Representative Young (126 Cong. Rec. H1861 (daily ed. Mar. 13. 1980)). Senator Gravel of Alaska did not vote on the matter. 126 Cong. Rec. S3151 (daily ed. Mar. 27, 1980). Since no member of Alaska's congressional delegation voted in favor of the Act, taxpayer and association appellees err (Mot. to Aff. 26-28) in suggesting that

history of the Act makes clear that the adoption of the tax was the price exacted for the concomitant decontrol of domestic oil prices, and that the main purpose of the tax was to raise revenue. See H.R. Rep. No. 96-304, *supra*, at 4, 7; S. Rep. No. 96-394, *supra*, at 6-7. There is no doubt, of course, that Congress was concerned that the general imposition of a windfall profit tax with respect to "newly discovered oil" could have a deterrent effect on future discovery and development, particularly in the case of new Alaskan oil. But there is no indication in the legislative history that this was such a critical consideration that Congress would have entirely foregone the adoption of this tax, and the $227.3 billion in revenue it was estimated to produce over a 12-15 year period, if it could not have provided an exemption for North Slope Alaska oil.[43]

In light of the continuing presence of a separability clause in the Internal Revenue Code, as well as the legislative history, the district court erred in ascribing significance (J.S. App. 8a) to the fact that a separate separability clause was not contained in the Act itself. There was simply no reason for Congress to add a separability clause to the Act in order to preserve those provisions of it that amended or were added to the Internal Revenue Code. Section 7852(a) has been held applicable to amendments to the 1954 Code as well as to provisions that were included in the original 1954 recodification of the internal revenue laws. See *Sipes* v. *United States*, 321 F.2d 174, 178 (8th Cir.), cert. denied, 375 U.S. 913 (1963) (amended provision of 1954 code); *United States* v. *Castro*, 413 F.2d 891, 894 (1st Cir.1969) (original provision of 1954 Code). Thus, when the

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the Alaska oil exemption was the price to obtain the support of the Alaska representatives for passage of the Act.

[43] The district court took pains to make clear its view that its holding would not affect any of the remaining provisions of the Act not directly related to the imposition of the windfall profit tax (see J.S. App. 16a-17a). But it is far more questionable whether Congress would have intended to confer the benefits of the energy conservation and production measures provided by Title II of the Act, the low-income energy assistance provided for by Title III or, indeed, possibly any of the relief measures provided by Title IV of the Act, if the revenues to be generated by Title I would not be forthcoming.

windfall profit tax provisions of Section 4986 through 4998 were added to the Internal Revenue Code, each of those provisions became subject to the separability clause of Section 7852(a) to the same extent as any other provision of the Code. As we have noted (*supra*, pp. 45-46), that was the precise understanding expressed by Senator Long during the debate on the uniformity question.[44]

2. In refusing to apply the separability clause of Section 7852(a), the district court reasoned (J.S. App. 9a-10a) that it would be engaging in impermissible judicial legislation if it extended the tax to crude oil producers that Congress intended to exempt. But the district court engaged all the more so in judicial legislation when it declined to enforce *any* portion of this statute after finding one portion invalid. That holding flouts the legislative history that strongly establishes a congressional preference that the invalid portion be severed and the remaining provisions of the Act enforced. While the district court's ruling follows precedents of an earlier era (see, *e.g.*, *United States* v. *Reese*, 92 U.S. 214 (1875); *Employers' Liability Cases*, 207 U.S. 463 (1908); *Trade-Mark Cases*, 100 U.S. 82 (1879)) when the courts adhered to a rigid separability rule that "required invalidation of an entire statute if any part of it was unconstitutionally broad, unless its different parts could be read as wholly independent provisions" (*Griffin* v. *Breckenridge*,

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[44] In its Mot. to Aff. 15-16, appellee State of Louisiana urges that the provisions of Section 7852(a) serve only to preserve the preexisting provisions of the Internal Revenue Code of 1954, and that the provision to be nullified is "the Act" that added unconstitutional provisions. On this theory, of course, the provisions added to the Code by the other titles of the Act would also presumably be nullified, a course the district court declined to take (see n. 13, *supra*).

In marked contrast, the Taxpayer and Association appellees assert (Mot. to Aff. 21) that the exemption itself would be perfectly valid if it stood on its own, and that Section 7852(a) should therefore be applied to strike down the entire windfall profit tax (thereby preserving the "valid" exemption). Surely, however, Section 7852(a) was intended to preserve the revenue by avoiding such drastic remedies, not to require them. Moreover, Senator Long, without contradiction, specified how Section 7852(a) was intended to apply if the Uniformity Clause were deemed violated.

403 U.S. 88, 104 (1971)), "[t]his Court has long since firmly rejected that rule * * *" (*ibid.*).

Finally, the district court's suggestion (J.S. App. 9a-10a) that the courts are powerless to apply a separability clause or general severability principles in such a way as to strike down a constitutionally invalid tax exemption without striking down the tax itself is contrary to *Utah Power & Light Co.* v. *Pfost*, 286 U.S. 165 (1932). There, a state tax statute containing a separability clause was similarly challenged on the ground that an exemption provision in the statute was unconstitutional. While the Court ultimately found it unnecessary to decide whether the exemption was actually invalid, it squarely rejected the contention that a defect in the exemption provisions would render the entire taxing statute unconstitutional. In this respect, this Court held (286 U.S. at 185):

> The primary object of the statute, under review, plainly, is to raise revenue. The exemption * * * and the provisions for carrying that exemption into effect are secondary. We find no warrant for concluding that the legislature would have been content to sacrifice an important revenue statute in the event that relief from its burdens in respect to particular individuals should become effective. On the contrary, it seems entirely reasonable to suppose that if the legislature had expressed itself specifically in respect of the matter, it would have declared that the tax, being the vital aim of the act, was to be preserved even though the specified exemptions should fall for lack of validity.

Here, the same conclusion as to the "vital aim" of the windfall profit tax, if anything, finds even stronger support in the legislative history showing Congress' principal intent to collect $227.3 billion from those persons who enjoy the "windfall profit" resulting from the decontrol of crude oil prices.[45] Therefore, even if it is assumed that the Alaskan

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[45] Contrary to the argument of the Taxpayer and Association appellees (Mot. to Aff. 21), the severability question is not governed by *Iowa-Des Moines National Bank* v. *Bennett*, 284 U.S. 239 (1931), rather than by the Court's subsequent decision in *Utah Power & Light Co.* v. *Pfost*, *supra*. Indeed, that prior decision did not involve either

oil exemption is barred by the Uniformity Clause, the "separability clause" of Section 7852(a) saves the remaining provisions of the Act. Hence, the tax remains fully applicable to the appellees regardless of the merits of their Uniformity Clause contention.[46]

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an invalid statutory tax exemption, the application of a separability clause, or general separability principles. What was challenged in *Iowa-Des Moines National Bank* was not an unconstitutional statute, but an allegedly discriminatory administration of a state statute that, by its terms, provided for the imposition of the *same* rate of tax against the petitioner banks and their competitors. The administering officials, however, collected a lower rate of tax from the competitors, in violation of the state statute, the Equal Protection Clause of the Fourteenth Amendment, and the federal statutory requirement (Rev. Stat. 5219 (1878 ed.)) that state taxes on national banks be imposed on a nondiscriminatory basis. While the Court did conclude that the proper remedy there was to grant the petitioners a refund of the difference between the two rates rather than to compel the State to collect the higher (and correct) amount of the tax from their competitors (284 U.S. at 247), it is clear that it did not intend this holding as a strict rule against applying separability clauses in such a way as to eliminate invalid exemption provisions. Indeed, only a few months later in the same Term, in *Utah Power & Light Co.*, the Court rejected virtually the same argument as that advanced here without even mentioning the *Iowa Des Moines Bank* decision.

[46] Even if the district court correctly held that the "separability clause" of Section 7852(a) of the Code could not properly be applied in such a way as to result in the imposition of a tax on the members of the class that Congress had given the benefit of an invalid exemption, *i.e.*, the holders of economic interests in "exempt Alaskan oil," it should nevertheless have applied it in such a way as to preserve both the benefit of that exemption and so much of the tax as would apply with absolute geographic uniformity throughout the United States, with or without that exemption. See *Welsh* v. *United States*, 398 U.S. 333, 361 (1970) (Harlan, J., concurring): "Where a statute is defective because of underinclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by the exclusion." There is no reason, however, to extend such benefits to those persons who are not actually aggrieved by the impermissibly narrow classification. Cf. *Califano* v. *Wescott*, 443 U.S. 76, 89 (1979). Here, the only persons who are arguably "aggrieved" by the exemption provided by Sections 4991(b)(3) and 4994(e) are those who are the holders of economic interests in "newly discovered oil" located in geographic

CONCLUSION

The judgment of the district court should be reversed.

Respectfully submitted.

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*The Solicitor General is disqualified in this case.

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areas other than those described in Section 4994(e), because that is the only category of oil that is not taxed with absolute geographic uniformity. All of the other categories provided for by the statute are taxed on precisely the same basis without regard to where such oil is found. Moreover, as the legislative history (*supra*, pp. 19-20) indicates, whether a tax should be imposed with respect to "newly discovered oil" was the most controversial aspect of this legislation. It can hardly be doubted that the tax would have been imposed with respect to the less controversial categories—as to which the element of "windfall profit" was more apparent—even if all "newly discovered oil" had been exempted. Accordingly, there was no reason for holding the taxing statute invalid insofar as it applies to categories other than "newly discovered oil."